

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1340 of 1997

with

SPECIAL CIVIL APPLICATION No 789 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

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RABIBBHAI A LODHA

Versus

G S R T C

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Appearance:

1. Special Civil Application No. 1340 of 1997

Mr.J.V.Japee for Petitioner

Mr.H.S.Munshaw for GSRTC.

SERVED for Respondent No. 2

2. Special Civil ApplicationNo 789 of 1989

Mr.Anjaria for petitioner-GSRTC.

Mr.J.P.Parmar for Mr.Y.N.Oza for Respondent No.1.

Mr.K.N.Shastri for Mr.D.A.Bambhania for Respondent  
No.2.

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CORAM ;MR.JUSTICE M.R.CALLA

Date of Order :04/08/97

## COMMON JUDGMENT

The petitioner in Special Civil Application No. 1340 of 1997 and respondent No.2 in Special Civil Application No. 789 of 1989 viz. Shri Haribhai A. Lodha was working as a Conductor in the Gujarat State Road Transport Corporation, the Corporation decided to dismiss the services of Shri Haribhai A. Lodha after holding an inquiry on the basis of certain allegations against him with regard to his conducting the bus and the issue of tickets etc. The Corporation moved an application seeking the approval of dismissal under section 33 of the Industrial Disputes Act and by order dated 11.1.1988 Shri Haribhai A. Lodha was placed under suspension by the Divisional Traffic Controller, Himmatnagar pending the decision of the approval application. This approval application was rejected by the Assistant Labour Commissioner on 19.12.1988 and was conveyed to the Corporation vide covering letter dated 23.12.1988. The Corporation preferred Special Civil Application No. 789 of 1989 challenging the order by which the application under section 33 was rejected. This Special Civil Application No. 789 of 1989 is pending after the issue of Rule in this regard. During the pendency of this Special Civil Application No. 789 of 1989 Shri Haribhai A. Lodha preferred a Special Civil Application No. 1340 of 1997 in this Court on 12.2.1997 praying that retiral benefits be directed to be released in his favour as he had already retired on 30.6.1995.

There is no dispute about the factual position that Shri Haribhai A. Lodha while in service as Conductor in the Corporation has retired from the service of the Corporation on 30.6.1995 and through out the period of suspension he has already received the subsistence allowance.

Now that the workman has already retired while being under suspension the approval application under section 33 for his dismissal has virtually become infructuous as even if any such approval is given, there is no question of dismissal now with retrospective effect and therefore the Special Civil Application No. 789 of 1989 filed by the Corporation against the order by which the approval application was rejected has become infructuous. The Special Civil Application No. 789 of 1989 is therefore dismissed as having become infructuous and the Rule is hereby discharged without any order of

costs.

So far as Special Civil Application No. 1340 of 1997 is concerned, the fact is that the petitioner has retired while suffering suspension and the approval application against his dismissal had been rejected. In this view of the matter he is to be treated to have continued in service till date of his retirement i.e. 30.6.1995 for all purposes and this Special Civil Application which has been brought about for the purpose of the release of terminal benefits deserves to be allowed. In the facts and circumstances of the case, when the decision to dismiss the petitioner had been taken on the basis of the inquiry but the approval application has been rejected and the challenge to the approval application has become infructuous and in the meantime the petitioner has retired on his superannuation it will be in the fitness of the things to direct the respondent corporation to count the period from the date of his suspension till the date of retirement as part and parcel of his total service period for the purpose of retiral benefits but the petitioner shall not be entitled to any part of the wages or salary other than the subsistence allowance which has already been received by him during the period of his suspension. The period from the date of suspension till date of retirement shall be counted for all purposes and for all retiral benefits except for the wages for the period as aforesaid. It is further made clear that for the purpose of retiral benefits last pay drawn by the petitioner may be taken to be such last pay which the petitioner would have drawn had he not been placed under suspension. The Special Civil Application No. 1340 of 1997 is accordingly allowed subject to the condition as aforesaid and the due amount of retiral benefits shall be released by the corporation within a period of two months from the date the certified copy of this order is served upon the Corporation. Rule is made absolute accordingly. No order as to costs.

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m.m.bhatt.